The Pressure to Cover
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Sociologist Erving Goffman's book "Stigma" describes what he calls “covering.” Written in 1963, the book describes how various groups -- including the disabled, the elderly and the obese -- manage their "spoiled" identities. After discussing passing, Goffman observes that "persons who are ready to admit possession of a stigma... may nonetheless make a great effort to keep the stigma from looming large." He calls this behavior covering. He distinguishes passing from covering by noting that passing pertains to the visibility of a characteristic, while covering pertains to its obtrusiveness. He relates how F.D.R. stationed himself behind a desk before his advisers came in for meetings. Roosevelt was not passing, since everyone knew he used a wheelchair. He was covering, playing down his disability so people would focus on his more conventionally presidential qualities.

As is often the case when you learn a new idea, I began to perceive covering everywhere. Leafing through a magazine, I read that Helen Keller replaced her natural eyes (one of which protruded) with brilliant blue glass ones. On the radio, I heard that Margaret Thatcher went to a voice coach to lower the pitch of her voice. Friends began to send me e-mail. Did I know that Martin Sheen was Ramon Estevez on his birth certificate, that Ben Kingsley was Krishna Bhanji, that Kirk Douglas was Issur Danielovitch Demsky and that Jon Stewart was Jonathan Leibowitz?

The New Discrimination

In recent decades, discrimination in America has undergone a generational shift. Discrimination was once aimed at entire groups, resulting in the exclusion of all racial minorities, women, gays, religious minorities and people with disabilities. A battery of civil rights laws -- like the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 -- sought to combat these forms of discrimination. The triumph of American civil rights is that such categorical exclusions by the state or employers are now relatively rare.

Now a subtler form of discrimination has risen to take its place. This discrimination does not aim at groups as a whole. Rather, it aims at the subset of the group that refuses to cover, that is, to assimilate to dominant norms. And for the most part, existing civil rights laws do not protect individuals against such covering demands. The question of our time is whether we should understand this new discrimination to be a harm and, if so, whether the remedy is legal or social in nature.

Consider the following cases:

Renee Rogers, an African-American employee at American Airlines, wore cornrows to work. American had a grooming policy that prevented employees from wearing an all-braided hairstyle. When American sought to enforce this policy against Rogers, she filed suit, alleging race discrimination. In 1981, a federal district court rejected her argument. It first observed that cornrows were not distinctively associated with African-Americans, noting that Rogers had only adopted the hairstyle after it "had been popularized by a white actress in the film '10.' " As if recognizing the unpersuasiveness of what we might call the Bo Derek defense, the court further alleged that because hairstyle, unlike skin color, was a mutable characteristic, discrimination on the basis of grooming was not discrimination on the basis of race. Renee Rogers lost her case.

Lydia Mikus and Ismael Gonzalez were called for jury service in a case involving a

defendant who was Latino. When the prosecutor asked them whether they could speak Spanish, they answered in the affirmative. The prosecutor struck them, and the defense attorney then brought suit on their behalf, claiming national-origin discrimination. The prosecutor responded that he had not removed the potential jurors for their ethnicity but for their ability to speak Spanish. His stated concern was that they would not defer to the court translator in listening to Spanish-language testimony. In 1991, the Supreme Court credited this argument. Lydia Mikus and Ismael Gonzalez lost their case.

Diana Piantanida had a child and took a maternity leave from her job at the Wyman Center, a charitable organization in Missouri. During her leave, she was demoted, supposedly for previously having handed in work late. The man who was then the Wyman Center's executive director, however, justified her demotion by saying the new position would be easier "for a new mom to handle." As it turned out, the new position had less responsibility and half the pay of the original one. But when Piantanida turned this position down, her successor was paid Piantanida's old salary. Piantanida brought suit, claiming she had been discharged as a "new mom." In 1997, a federal appellate court refused to analyze her claim as a sex-discrimination case, which would have led to comparing the treatment she received to the treatment of "new dads." Instead, it found that Piantanida's (admittedly vague) pleadings raised claims only under the Pregnancy Discrimination Act, which it correctly interpreted to protect women only while they are pregnant. Diana Piantanida lost her case.

Robin Shahar was a lesbian attorney who received a job offer from the Georgia Department of Law, where she had worked as a law student. The summer before she started her new job, Shahar had a religious same-sex commitment ceremony with her partner. She asked a supervisor for a late starting date because she was getting married and wanted to go on a celebratory trip to Greece. Believing Shahar was marrying a man, the supervisor offered his congratulations. Senior officials in the office soon learned, however, that Shahar's partner was a woman. This news caused a stir, reports of which reached Michael Bowers, the attorney general of Georgia who had successfully defended his state's prohibition of sodomy before the United States Supreme Court. After deliberating with his lawyers, Bowers rescinded her job offer. The staff member who informed her read from a script, concluding, "Thanks again for coming in, and have a nice day." Shahar brought suit, claiming discrimination on th! e basis of sexual orientation. In court, Bowers testified that he knew Shahar was gay when he hired her, and would never have terminated her for that reason. In 1997, a federal appellate court accepted that defense, maintaining that Bowers had terminated Shahar on the basis of her conduct, not her status. Robin Shahar lost her case.

Simcha Goldman, an Air Force officer who was also an ordained rabbi, wore a yarmulke at all times. Wearing a yarmulke is part of the Orthodox tradition of covering one's head out of deference to an omnipresent god. Goldman's religious observance ran afoul of an Air Force regulation that prohibited wearing headgear while indoors. When he refused his commanding officer's order to remove his yarmulke, Goldman was threatened with a court martial. He brought a First Amendment claim, alleging discrimination on the basis of religion. In 1986, the Supreme Court rejected his claim. It stated that the Air Force had drawn a reasonable line between "religious apparel that is visible and that which is not." Simcha Goldman lost his case.

These five cases represent only a fraction of those in which courts have refused to protect plaintiffs from covering demands. In such cases, the courts routinely distinguish between immutable and mutable traits, between being a member of a legally protected group and behavior associated with that group. Under this rule, African-Americans cannot be fired for their skin color, but they could be fired for wearing cornrows. Potential jurors cannot be struck for their ethnicity but can be struck for speaking (or even for admitting proficiency in) a foreign language. Women cannot be discharged for having two X

chromosomes but can be penalized (in some jurisdictions) for becoming mothers. Although the weaker protections for sexual orientation mean gays can sometimes be fired for their status alone, they will be much more vulnerable if they are perceived to "flaunt" their sexuality. Jews cannot be separated from the military for being Jewish but can be discharged for wearing yarmulkes.

This distinction between being and doing reflects a bias toward assimilation. Courts will protect traits like skin color or chromosomes because such traits cannot be changed. In contrast, the courts will not protect mutable traits, because individuals can alter them to fade into the mainstream, thereby escaping discrimination. If individuals choose not to engage in that form of self-help, they must suffer the consequences.

The Case Against Assimilation

The flaw in the judiciary's analysis is that it casts assimilation as an unadulterated good. Assimilation is implicitly characterized as the way in which groups can evade discrimination by fading into the mainstream -- after all, the logic goes, if a bigot cannot discriminate between two individuals, he cannot discriminate against one of them. But sometimes assimilation is not an escape from discrimination, but precisely its effect. When a Jew is forced to convert to Protestantism, for instance, we do not celebrate that as an evasion of anti-Semitism. We should not blind ourselves to the dark underbelly of the American melting pot.

Take the cornrows case. Initially, this case appears to be an easy one for the employer, as hairstyle seems like such a trivial thing. But if hair is so trivial, we might ask why American Airlines made it a condition of Renee Rogers's employment. What's frustrating about the employment discrimination jurisprudence is that courts often don't force employers to answer the critical question of why they are requiring employees to cover. If we look to other sources, the answers can be troubling.

John T. Molloy's perennially popular self-help manual "New Dress for Success" also tells racial minorities to cover. Molloy advises African-Americans to avoid "Afro hairstyles" and to wear "conservative pinstripe suits, preferably with vests, accompanied by all the establishment symbols, including the Ivy League tie." He urges Latinos to "avoid pencil-line mustaches," "any hair tonic that tends to give a greasy or shiny look to the hair," "any articles of clothing that have Hispanic associations" and "anything that is very sharp or precise."

Molloy is equally frank about why covering is required. The "model of success," he says, is "white, Anglo-Saxon and Protestant." Those who do not possess these traits "will elicit a negative response to some degree, regardless of whether that response is conscious or subconscious." Indeed, Molloy says racial minorities must go "somewhat overboard" to compensate for immutable differences from the white mainstream. After conducting research on African-American corporate grooming, Molloy reports that "blacks had not only to dress more conservatively but also more expensively than their white counterparts if they wanted to have an equal impact."

Molloy's basic point is supported by social-science research. The economists Marianne Bertrand and Sendhil Mullainathan recently conducted a study in which they sent out resumes that were essentially identical except for the names at the top. They discovered that resumes with white-sounding names like Emily Walsh or Greg Baker drew 50 percent more callbacks than those with African-American-sounding names like Lakisha Washington or Jamal Jones. So it seems that even when Americans have collectively set our faces against racism, we still react negatively to cultural traits -- like hairstyles, clothes or names -- that we associate with historically disfavored races.

The demand to cover is anything but trivial. It is the symbolic heartland of inequality -- what reassures one group of its superiority to another. When dominant groups ask subordinated groups to cover, they are asking them to be small in the world, to forgo prerogatives that the dominant group has and therefore to forgo equality. If courts make critical goods like employment dependent on covering, they are legitimizing second-class citizenship for the subordinated group. In doing so, they are failing to vindicate the promise of civil rights

The New Civil Rights

The new civil rights begins with the observation that everyone covers. When I lecture on covering, I often encounter what I think of as the "angry straight white man" reaction. A member of the audience, almost invariably a white man, almost invariably angry, denies that covering is a civil rights issue. Why shouldn't racial minorities or women or gays have to cover? These groups should receive legal protection against discrimination for things they cannot help. But why should they receive protection for behaviors within their control -- wearing cornrows, acting "feminine" or flaunting their sexuality? After all, the questioner says, I have to cover all the time. I have to mute my depression, or my obesity, or my alcoholism, or my shyness, or my working-class background or my nameless anomie. I, too, am one of the mass of men leading lives of quiet desperation. Why should legally protected groups have a right to self-expression I do not? Why should my struggle for an authentic self matter less?

I surprise these individuals when I agree. Contemporary civil rights has erred in focusing solely on traditional civil rights groups -- racial minorities, women, gays, religious minorities and people with disabilities. This assumes those in the so-called mainstream -- those straight white men -- do not also cover. They are understood only as obstacles, as people who prevent others from expressing themselves, rather than as individuals who are themselves struggling for self-definition. No wonder they often respond to civil rights advocates with hostility. They experience us as asking for an entitlement they themselves have been refused -- an expression of their full humanity.

Civil rights must rise into a new, more inclusive register. That ascent makes use of the recognition that the mainstream is a myth. With respect to any particular identity, the word "mainstream" makes sense, as in the statement that straights are more mainstream than gays. Used generically, however, the word loses meaning. Because human beings hold many identities, the mainstream is a shifting coalition, and none of us are entirely within it. It is not normal to be completely normal.